IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 31076 of 2006(Y)

AGAINST THE ORDER IN EP. 335 /2003 IN SS.1942/2000 of I ADDL.SUB COURT, KOZHIKODE

.....

PETITIONER:

M.K.MOHAMMED RASHEED,
WHITE CABIN, CONVENT ROAD,
NAGARAM AMSOM, KOZHIKODE DISTRICT.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SMT.C.G.PREETHA

RESPONDENT:

M/S.KACHIN CREATIONS,
PARVATHI INDUSTRIAL ESTATE,
UNIT NO.317/318, SUN MILL COMPOUND,
LOWER PEARL, MUMBAI-400013.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.31076/2006 Y

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE E.A.NO.985 OF 2006 IN E.P.NO.335 OF 2003 IN S.S.NO.1942 OF 2000 DD. 26/09/2006.**

EXT.P2: **COPY OF THE E.A.NO.990/2006 IN E.P.NO.335 OF 2003 IN S.S.NO.1942 OF 2000 DTD. 26/09/2006.**

EXT.P3: **COPY OF THE ORDER DTD. 4/11/2006 IN E.A.NO.985 OF 2006 IN E.P.NO.335/2003 IN S.S.NO.1942/2000 ON THE FILE OF SUB COURT, KOZHIKODE.**

EXT.P4: **COPY OF THE ORDER DTD. 4/11/2006 IN E.A.NO.990 OF 2006 IN E.P.NO.335 OF 2003 IN SS.NO.1942/2000 ON THE FILES OF SUB COURT, KOZHIKODE.**

/TRUE COPY/

P.A. TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 31076 of 2006

Dated this the 24th day of July , 2007

JUDGMENT

The grievance of the petitioner, who is the judgment debtor against whom order of arrest was passed by the Execution Court on the ground that he did not appear in response to notice under Rule 37, is that two applications filed by him for recalling the warrant and for recalling the Amin who was deputed for arresting him were dismissed. Ext.P3 is the order by which the application to recall the warrant was dismissed. Ext.P3 it must be observed is a non speaking order. On the basis of Ext.P3 only, the application filed by the petitioner for recalling the Amin was dismissed under Ext.P4. Even though the respondent was served with notice in this writ petition, they have not entered appearance before this court to resist the prayers in the writ petition.

2. Obviously, the order of arrest passed against the petitioner was not preceded by any enquiry by the court under

Rule 40 of Order 21 CPC as to whether the petitioner is possessed of sufficient means to pay the decree debt or any substantial portion there of, and yet neglected to make payment. Annexure I is a copy of the statement of objection filed by the petitioner along with the application to recall the warrant. Annexure I will show that contention though belatedly has been raised by the petitioner to the effect that he is not liable to be arrested and detained in civil prison. This court became inclined to grant stay only on condition that the petitioner deposits Rs.20,000/- towards the decree debt before the Execution Court within one month from 29.11.2006. The learned counsel for the petitioner submits that the above condition has been complied with. If that be so, I am of the view that there is justification for directing reconsideration on the basis of an enquiry to be held into the Annexure- I objections.

2. Under the above circumstances, this writ petition will stand disposed of issuing the following directions:

The Execution Court will verify whether the petitioner has deposited on or before 29.11.2006 a sum of Rs. 20,000/- as ordered by this court on 29.11.2006 towards the decree debt. If

it is seen on verification that the deposit has been made, the Execution Court will post the Execution Petition for enquiry into Annexure I objections subject to the further condition that till such time as enquiry is completed, the petitioner shall continue to pay every month towards the decree debt at the rate of Rs.5,000/-(Rs. Five Thousand only) commencing from 1st September 2007. In the enquiry both sides should be permitted to adduce evidence. The enquiry shall be completed by the learned Subordinate Judge at his earliest and at any rate within six months of the petitioner producing a copy of this judgment.

PIUS C. KURIAKOSE,
JUDGE.

dpk